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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the
Commission's Own Motion into the Application
of the California Environmental Quality Act to
Applications of Jurisdictional
Telecommunications Utilities for Authority to
Offer Service and Construct Facilities.

Rulemaking 06-10-006
(Filed October 5, 2006)

**ADMINISTRATIVE LAW JUDGE'S RULING DIRECTING PARTIES TO MEET
AND CONFER AND TO SUBMIT COMMENTS AS FOLLOW-UP TO
WORKSHOP**

This ruling is to follow up on the February 27, 2007 workshop held in this docket. At the workshop, much of the discussion focused on the selection of the lead agency under the California Environmental Quality Act (CEQA), the applicability of categorical and statutory exemptions to various activities undertaken by telecommunications providers, and the development of an expedited process for reviewing the environmental impacts of proposed construction activities by telecommunications providers.

In order to assist the Commission in its consideration of these issues, the parties shall meet and confer and submit joint comments within 45 days of the date of this ruling, or by no later than the close of business on June 22, 2007, on the topics below.¹ For the purposes of the meet and confer session and the

¹ Although all parties are to participate in the meet and confer session and the development of joint comments, parties may also submit individual comments on issues of particular concern to them.

preparation of comments, the parties shall assume that any requirements or guidelines developed in this proceeding shall apply to all telecommunications providers in this state, including new entrants.

A. Selection of Lead Agency - Although some parties have expressed their view that local agencies are best equipped to be the lead agency under CEQA for review of construction activities by telecommunications providers, please address the following, giving specific examples:

- Are there circumstances under which the Commission should be the lead agency pursuant to State CEQA Regulation 15051?
- Are there circumstances under which the Commission, rather than a local agency, serving as the lead agency will result in more effective environmental review and reduce duplication of effort among local agencies, such as when a project crosses multi-jurisdictional boundaries or has cumulative impacts that affect more than a single jurisdiction?
- Are there certain types of projects that are better suited for CEQA review by the Commission as the lead agency, as opposed to the local agency, or vice versa?
- Are there circumstances under which a cooperative, joint environmental review by the Commission and local agencies would be appropriate? (Please note that some of the comments filed by parties suggested that the Commission and local agencies jointly conduct CEQA review, and that the Commission conduct broad, programmatic CEQA review and local agencies conduct CEQA review at the local project level.) If so, how should this cooperative process work? (See State CEQA Guideline Section 15051(d)).
- Are there other circumstances in which the local agency serving as lead agency would be more effective?

B. Activities Subject to Categorical and Statutory Exemptions under CEQA

- Are there certain types of construction activities performed by telecommunications providers that generally fall within existing

statutory and/or categorical exemptions under CEQA? Please specifically describe each type of construction activity, state the exemption(s) that you believe would apply, and any circumstances under which a proposed categorical exemption(s) would not apply.

- Should the Commission pursue the establishment of a new categorical exemption for certain construction activities by telecommunication providers in existing, disturbed public rights of way and utility easements, as proposed in the reply comments of NextG?²
- Should the Commission adopt an expedited procedure for reviewing the applications of telecommunications providers to perform construction activities that are claimed to be exempt from CEQA, such as the process adopted in D. 06-04-030, Attachment E (Application of NewPath Networks LLC for a Modification of its Certificate of Public Convenience and Necessity)? What process do the parties suggest?

C. Other Suggestions for the Commission's CEQA Process as Applied to Telecommunications Providers

- Do the parties have other suggestions for the Commission's CEQA process as applied to telecommunications providers that

² In its reply comments, NextG proposed that the Commission establish a categorical exemption for certain construction activities in existing, disturbed public rights of way and utility easements, including but not limited to:

- Installation of fiber optic cable in existing underground conduit in public rights of way;
- Aerial installation of fiber optic cable on existing poles in public rights of way; and
- Installation of telecommunications equipment on existing poles in public rights of way

would further the goals stated in the OIR issued in this proceeding?³

Comments should be filed with the Commission Docket Office in accordance with our Rules of Practice and Procedure (Rules), and served on all other parties on the service list. The parties shall also send forward a copy of their comments directly to me by facsimile sent to (415)703-1723, by e-mail addressed to tom@cpuc.ca.gov; or by overnight mail or personal delivery addressed to me at 505 Van Ness Avenue, Room 5041B, San Francisco CA 94102.

If any party has questions regarding Commission procedures, please contact the Commission Public Advisor's Office by phone at (866) 849-8390 or (415) 703-2074 or by email at public.advisor@cpuc.ca.gov. The Commission Rules of Practice and Procedure are also available for review on our website at www.cpus.ca.gov.

IT IS SO RULED.

Dated May 8, 2007, at San Francisco, California.

/s/ MYRA J. PRESTIDGE

Myra J. Prestidge
Administrative Law Judge

³ In the OIR, the Commission stated that the purpose of this proceeding is to develop rules and policies that will: (1) ensure that the Commission's practices comply with the current requirements and policies of CEQA; (2) promote the development of an advanced infrastructure, particularly with regard to facilities that provide broadband capabilities, and (3) make certain that the application of CEQA in the area of telecommunications does not cause undue harm to competition, particularly intermodal competition. (Rulemaking 06-10-006, October 5, 2006, 2006 Cal. PUC Lexis 372.)